

STATE OF MICHIGAN
COURT OF APPEALS

ALAN K. SMITH and DONNA J. SMITH,

Plaintiffs-Appellants,

v

PENBRIDGE ASSOCIATES, INC. d/b/a
PENBRIDGE FARMS, ROBERT M. SCOTT, SR.,
THE ESTATE OF MICHIKO YAMAGISHI, and
THE MICHIKO YAMAGISHI REVOCABLE
TRUST,

Defendants-Appellees.

UNPUBLISHED

December 7, 1999

No. 212822

Hillsdale Circuit Court

LC No. 94-24-382 CK

Before: McDonald, P.J., and Kelly and Cavanagh, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting summary disposition in favor of and dismissing defendant, The Michiko Yamagishi Revocable Trust (the "Trust"). We affirm.

Plaintiffs argue that certain transfers of property among the various defendants were fraudulently made for little or no consideration. The Trust admitted that title to real property had been transferred from defendant Robert M. Scott to his ex-wife, and from his ex-wife to the Trust. The Trust claimed that the transfers were made for fair consideration, and denied any knowledge of plaintiffs' lawsuit. The Trust thereafter moved for summary disposition, which the trial court granted on its finding that adequate consideration had been given for the transfer of property.

Specifically, the court found that, after the judgment had been entered against defendant Penbridge, Scott borrowed \$250,000 from his ex-wife, and that, in return, he had transferred title to a parcel of property that was valued at more than \$300,000, but with a net value of approximately \$200,000. The trial court also found that Scott had given his ex-wife a promissory note and mortgage in the amount of \$690,000, and that the note and mortgage were part of the estate and not the Trust. Based on its finding, the trial court ruled that there was no material question of fact regarding the adequacy of the consideration given for the property transfer, and granted summary disposition in favor of the Trust. We affirm.

We review a trial court's ruling on a motion for summary disposition de novo on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich. 358, 362; 547 NW2d 314 (1996).

Under the Uniform Fraudulent Conveyance Act MCL 566.11 *et seq.*; MSA 26.881 *et seq.* (repealed by 1998 P.A. 434), conveyances made by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration. MCL 566.14; MSA 26.884 "Fair consideration" is given when in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or when such property, or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared with the value of the property or obligation obtained. [MCL 566.13; MSA 26.883 (repealed 1998 P.A. 434).]

If a transfer is proven fraudulent, a creditor may have the transfer set aside as against any person except a purchaser for fair consideration. *Doe v Ewing*, 205 Mich App 605, 607; 517 NW2d 849 (1994). The value of the real property transferred by defendant Scott to his ex-wife was not disproportionately small in comparison with the amount of the loan. The transfer was made for fair consideration and was not fraudulent. Consequently, the transfer will not be set aside.

Affirmed.

/s/ Gary R. McDonald
/s/ Michael J. Kelly
/s/ Mark J. Cavanagh